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Filed on 13/2/05
by Shri B D Guru
..... Advocate

(3)

R. to A.R. (J.)
Roll 13/2/05

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 2871/2005.

PETITIONER : Harjot Singh, S/o Dr. H.S. Gurudatta, Aged about 18 years, R/o Akalpurakh Hospital, Opposite Railway Station. Mahasamund, Distt.- Mahasamund (C.G.)

VERSUS

RESPONDENTS :

1) State of Chhattisgarh, Through: The Secretary, Department of Health, Family Welfare Department D.K.S. Bhawan, Raipur (C.G.)

2) The Director, Medical Education Raipur (C.G.)

3) The Dean, Medical College, Raipur, (C.G.)

4) Ms. Pooja Namdeo, Rank # 68. C/o. Dean Medical Collage Raipur, (C.G.)

5) Simantini Bose.

6) Namita shrivastava

7) Sangeeta K.

8) Pratibha Jha.

C/o. Dean Medical College Raipur, (Chhattisgarh)

Received Copy
13/2/05
Counsel for A.G.

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT/WRITS DIRECTIONS ETC., IN THE NATURE OF MANDAMUS, CERTIORARI AND/OR ANY OTHER SUITABLE WRIT OF LIKE NATURE.

(226)

HIGH COURT OF JUDICATURE AT BILASPUR,

CHHATTISGARH

Writ Petition No.2871 of 2005

Harjot Singh Gurudatta

- Versus -

State of Chhattisgarh & others

POST FOR ORDERS ON 27TH JULY, 2005

Sd/-
L.C. Bhadoo
Judge

(27)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2871 of 2005

Harjot Singh Gurudatta

- Versus -

State of Chhattisgarh & others

Present: -

Mr. B.D. Guru, Advocate:	For the petitioner
Mr. Sandeep Dubey, Govt. Adv:	For respondent No.1 to 3.
Mr. V.G.Tamaskar, Advocate:	For respondent No.4, 5 & 8.
Mr. Sanjay K. Agarwal, Advocate:	For respondent No.6 & 7.

Before Hon'ble Mr. L.C. Bhadoo, J.

O R D E R

(Passed on 27th July, 2005)

1. By this writ petition under Articles 226 & 227 of the Constitution of India the petitioner, who appeared in the Pre-Medical Test Examination, 2005 for admission in the 1st year M.B.B.S. course and secured 44th position in the merit list prepared by the respondents, has questioned the faulty manner in which 30% horizontal reservation has been provided to the women class out of 39 seats meant for open category.

2. The horizontal reservation to the women in each category is provided under Article 15(3) of the Constitution of India, but not on the footing of vertical reservation which has been provided under Article 15(4) of the Constitution of India for making special reservation for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

3. The case of the petitioner, as set out in the petition, is that he appeared in the Pre-Medical Test Examination, 2005, which was conducted by the Chhattisgarh Madhyamik Shiksha Mandal, Raipur for admission into medical, agricultural & veterinary colleges in the State of Chhattisgarh, for that purpose a brochure (Annexure P-1) was issued by the respondents. The examination was conducted for admission in various medical and dental colleges in the State for total 82 seats. In the said examination the petitioner secured 44th position, therefore, he was expecting that he will be selected against the open category seat, as total 39 seats have fallen in the share of unreserved category, out of which 30% seats were reserved for women class on the basis of horizontal reservation, one seat was reserved for freedom fighter category (women), one seat was reserved for Soldier (women) & one seat for handicapped. When the selection list was notified for information to the students, the petitioner was shocked to learn that his name was not in the list of selected candidates to be admitted in the 1st year M.B.B.S. course in the Medical College, Raipur. The petitioner went to the office of Dean, Medical College, Raipur to verify the fact and to know about the method & manner in which the seats have been distributed while preparing the select list, which has been notified by the Director, Medical Education. The petitioner was informed that in accordance with the horizontal reservation for women category they firstly set apart 13 seats for women candidates out of total 39 open category seats and thereafter, they prepared the merit list for the remaining open category 39 seats after deducting seat reserved for freedom fighter (woman), handicapped & Soldier (woman). Further case of the petitioner is that five women candidates were already selected in the first 26 seats, therefore, according to horizontal reservation meant for women class the respondent authorities ought to have deducted five seats of those female candidates who have already secured position in the merit list among first 26

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candidates, whereas, the respondents have provided the horizontal reservation for women class in the form of vertical reservation by setting apart 13 seats for female candidates, as if the reservation was made for them under Article 15(4) of the Constitution of India.

4. Reply has been filed on behalf of respondent Nos.1 to 3 in which it has been mentioned that Rule 4.6 of the brochure provided a condition that the candidates who do not desire to take admission against any one of the four classes shall be retained against Nil class in their respective categories. Therefore, five women candidates, who secured their position in the first 26 seats, could not be counted against the 30% reserved seats for women class. Out of total 39 seats meant for unreserved category, one seat was reserved for Freedom Fighter (woman), one for Sainik (woman), one for handicapped, 13 seats was reserved for female class and remaining 26 seats were reserved for 'no class' and as the petitioner's rank was 44th in the merit list, therefore, he could not get admission in 'no class' seats, which was only 26. Therefore, the petition of the petitioner is liable to be dismissed.

5. Return on behalf of respondent Nos.4, 5 & 8 has also been filed in which it has been mentioned that respondent No.4-Miss Pooja Namdeo has already been granted admission on 2.7.2005 and she has deposited Rs.12,000/- admission fee, respondent No.5- Miss Samitini Bose has also been granted admission on 2.7.2005 and she has also deposited the admission fee i.e. Rs.12,000/- & respondent No.8- Miss Pratibha Jha has also been granted admission on 2.7.2005 and she has also deposited the admission fee. It has been mentioned in the return that the petitioner having accepted the terms & conditions enumerated in the Notification No.F-16/1/2001/9/55 dated 10.4.2003 appeared in the examination and therefore, he is estopped from challenging the procedure of admission, as the same is

hit by Doctrine of Estoppel. It has further been mentioned that Pt.Jawahar Lal Nehru Memorial Medical College, Raipur is an autonomous body, therefore, it is necessary part and ultimately, it has been prayed that the petition of the petitioner be dismissed.

6. In the return filed on behalf of respondent No.6 & 7 it has been mentioned that sub-rule (6) of Rule 4 was substituted by an amendment in the Rules, 2003 by notification dated 5-5-2004 which provides that *"the candidates who do not desire to take admission against any of four classes shall be retained against Nil class in their respective category."* So far as this women class is concerned, the women candidates, who have secured their position in unreserved open category, are eligible to get admission without taking benefit of reservation, as provided for female class. Likewise word "four classes" mentioned in the sub-rule (6) of Rule 4 is referable to the four classes mentioned in sub-rule (5) i.e. military personnel, freedom fighter, disabled person & women class. Thus, the object of the Legislature in enacting sub-rule (6) of Rule 4 is to give weightage to the merit of a candidate and to promote the merit of a student who has secured the position in the merit list and entitled to be admitted against the unreserved seat. Reservation for the women is provided under Article 15(3) of the Constitution of India. It has been mentioned that if a woman candidate entitled to be admitted against the unreserved seat will be compelled to be admitted against 30% seats reserved for women class, then it will be the case of discrimination on the basis of gender, as the women candidate securing position in merit is eligible and entitled to be admitted against the unreserved category and she cannot be compelled to take admission against the reserved seat merely because she is a woman, whereas the male candidate has no such disadvantage of their being man. Ultimately, it has been prayed that the petition of the petitioner be dismissed.

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7. In this connection, if we look into the Chapter-II of the brochure which relates to the rules for admission in medical and dental colleges, Rule 2 of this Chapter deals with the definitions, sub-rule (2) of Rule 2 defines the 'category' means *'any one category out of three categories i.e. Scheduled Castes (SC), Scheduled Tribes (ST) & Other Backward Classes (OBC)'*; sub-rule-(3) of Rule 2 defines the 'class', which defines that *"any one class out of three classes will form the class i.e. Soldier, freedom fighter and women'*. Rule 3 of this Chapter deals with the eligibility criteria for students who can appear in the PMT examination. Sub-rule (3) of Rule 3 prescribes educational qualification for appearing in the examination. Sub-rule (1) of Rule 4 prescribes reservation setting apart 15% seats for All India Quota, sub-rule (2) prescribes 3% seats for Central Pool, sub-rule (4) prescribes that out of remaining seats 15% seats will be reserved for Scheduled Castes (SC), 21% for Scheduled Tribes (ST) & 14% for Other Backward Classes (OBC) (except creamy layer). Sub-rule (5) prescribes horizontal reservation of 3% for Sainik class, 3% for freedom fighter class and 30% for women class. Sub-rule (6) prescribes that if any candidate out of these three cadres/classes is not interested to take admission against that class then he/she will be kept in his/her related category without any class. Sub-rule (7) of Rule 4 further lays down that on completion of quota of Sainik, freedom fighter and women candidates, a merit list of eligible candidates will be prepared of their own category on the basis of merit irrespective of class and they will be kept at their right place. Sub-rule (9) further lays down that if sufficient number of students/candidates are not available, then the left out seats will be converted into no class seats. This Chapter further provides that how the counselling shall take place and other procedures to be adopted for admitting the students.

8. On the basis of break-up of seats for each category, 39 seats remained for unreserved category i.e. open category

and out of those seats one seat was reserved for Sainik (woman), one seat for freedom fighter (woman), one seat for handicapped class and 30% seats were reserved for women class on horizontal basis, as such 13 seats were reserved for women in the open category. The respondents while preparing the merit list after counselling firstly set apart 13 seats meant for women class out of 39 seats of open category, one seat was set apart for freedom fighter, one for handicapped and one for soldier and for remaining 26 seats prepared merit list according to the merit position secured by the candidates irrespective of class or category.

9. I have heard Mr. B.D. Guru, counsel for the petitioner, Mr. Sandeep Dubey, Government Advocate for respondent Nos.1 to 3, Mr. V.G. Tamaskar, counsel for respondent Nos.4, 5 & 8 and Mr. Sanjay K Agarwal, counsel for respondent Nos.6 & 7.

10. Learned counsel for the petitioner Mr. Guru relying upon the decision of this Court in **W.P. No.2234/2003** between **Ashish Sharma & others Vs. State of Chhattisgarh & others** reported in **AIR 2004 Chhattisgarh 27** interpreting the same rules argued that horizontal reservation for women has been provided under Article 15(3) of the Constitution of India on horizontal basis and not on the vertical basis, therefore, the respondents were not entitled to set apart 13 seats just like vertical reservation. He also argued that respondents ought to have first prepared the merit list of 39 candidates of open category irrespective of their category or class and if in that list 30% quota of women candidates was not satisfied then the respondents were entitled to include the name of as many as women candidates which were short of 13 numbers by deleting the corresponding number of candidates from the bottom of list of 39 candidates, but in the present case a faulty procedure has been adopted by the respondents by firstly setting apart 13 seats for women candidates, as if the same was vertical reservation. When five female

candidates had already secured position in the merit list in that case the respondents were required to add only eight (08) female candidates in the merit list of 39 candidates by deleting the name of eight candidates from the bottom of list.

11. On the other hand, learned Government Advocate Mr. Sandeep Dubey & learned counsel for respondent Nos.6 & 7 Mr. Sanjay K Agarwal argued that in the decision of Ashish Sharma (*supra*) relied upon by the counsel for the petitioner sub-rule (6) of Rule 4 was not considered which envisages that "*a candidate who do not desire to take admission against any one of four class shall be retained against Nil class in their respective class.*" Therefore, the female candidates who had not opted for horizontal reservation against 30% reserved seats they could not be considered against the reservation meant for women class in the open category and as per sub-rule (6) of Rule 4 they were to be considered against the open category as a Nil class candidate and that is why the respondents had rightly first set apart 13 seats for women candidates. As such, counsel for the respondents argued up to the interpretation of only sub-rule (6) of Rule 4 and they have not disputed on other points of the earlier decision of this Court and also on the point that what is horizontal reservation and what is vertical reservation.

12. As far as arguments advanced by learned counsel for the respondents No.1 to 3 and 6 to 7 regarding interpretation of sub-rule (6) of Rule 4 is concerned, I do not find any substance in the argument advanced by them, for the reason, that in the first instance, there is nothing on record which goes to show that five women candidates, who secured position in the merit list of out of 26 candidates at Sr. No.6, 7,8, 10 & 25, had not opted for reservation meant for women class and as a result of which a separate list of 13 women candidates was prepared. Even otherwise, while interpreting sub-rule (6) the same has to be read with sub-rule (5) which envisages

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that there shall be 30% reservation for women class on horizontal basis and as per judgment of the Hon'ble Apex Court in the matter of **Anil Kumar Gupta and others Vs. State of U.P. and others** reported in **(1995) 5 Supreme Court Cases 173**, the Court in Para-15 of the judgment held that *"...where the seats reserved for horizontal reservation, are proportionately divided among the vertical (social) reservations and are not intertransferable, it would be a case of compartmentalized reservations..."* Again in Para-17 the Court held that "... *the respondents may note this for their future guidance- that while providing horizontal reservations, they should specify whether the horizontal reservation is a compartmental one or an overall one. Therefore, we are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalized in the sense explained above. In other words, the notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz. ST, SC and OBC and OC.* Therefore, in view of the above judgment, the horizontal reservations have to be compartmentalized. The horizontal reservation for women has been made under Article 15(3) of the Constitution of India which envisages that "*nothing in this article shall prevent the State from making any special provisions for women and children*, whereas, vertical reservation has been provided under Article 15(4) of the Constitution of India for ST, SC and OBC classes of citizens. When under sub-rule (5) of Rule 4 30% horizontal reservation has already been made in favour of the women candidates and this reservation has been made in order to protect the interest of the women in the society, as the Legislature considered that the women are not being treated on par with the males, as the Indian society being dominated by male, this protective discriminatory reservation has been made in favour of the

women for their empowerment, therefore, that cannot be treated on par with the vertical reservation, which has been provided under Article 15(4) of the Constitution of India. As such, the correct interpretation of the above rules as per constitutional scheme is that 30% horizontal reservation can be made in favour of the women class and if anything else is made then same is arbitrary and unreasonable and same will be inconsistent with the constitutional provisions. The only intention of the Legislature is to secure 30% horizontal reservation to the women class and the correct interpretation is that respondents were required to ensure that out of 39 open category seats 13 women candidates get entitled for admission on the horizontal basis reservation and if some women candidates had already secured position in the merit list then that number of candidates have to be deducted from the 13 women candidates list and in order to fulfill the quota of 30% horizontal reservation, remaining women candidates were to be given admission by deleting the corresponding number of candidates from the bottom of merit list. In this connection, the Hon'ble Apex Court in the matter of Anil Kumar Gupta (*Supra*) held that:-

> *"The proper and correct course is to first fill up the open category quota (50%) on the basis of merit, then fill up each of the social reservation quotas, i.e. ST, SC and BC, the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied- in case it is an overall horizontal reservation- no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom*

If, however, it is a case of compartmentalized horizontal reservation, *then the process of verification and adjustment/accommodation should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied."*

(Emphasis supplied)

13. Even otherwise, if the interpretation, which has been put forward by the counsel for the respondents, is accepted, then the same will be violative of judgment of the Hon'ble Apex Court in the matter of **Indira Swahney etc. etc. Vs. Union of India and other etc. etc.** reported in **AIR 1993 Supreme Court 477** in which it has been held that reservation cannot be made more than 50% and for example, if 13 women candidates secured their position in the merit list of open category and considering them as Nil class they are given admission in the open category, then again 13 seats are to be given to other women candidates on horizontal basis reservation, which will be exceeding 50% quota and resultantly, will be prejudiced to the interest of male candidates, as out of 39 seats 26 seats will be occupied by the female candidates and only 13 seats will be available for the male candidates. Resultantly, the reservation made in favour of women shall also be on the pattern of vertical reservation, which is not the intention of the Legislature. Therefore, the correct interpretation of horizontal reservation compartmentalized is that the authorities should ensure that 30% women candidates are given admission against each category and in case 13 women candidates secured their position in the merit list on their own merit then there cannot be a question of further reservation for other women candidates. In order to satisfy 30% quota for the women candidates the authorities are first require to prepare the total 39 candidates merit list irrespective of

class or category and in that list of 39 candidates, if the quota of women class is not satisfied, the shortage of prescribed 13 seats of women can be filled to satisfy the 30% reservation by deleting the corresponding numbers of other students from the bottom of merit list. Moreover, if the argument advanced by learned counsel for the respondents is accepted then there will be no difference between vertical and horizontal reservations, therefore, the above rules shows that while preparing the brochure respondent No.2 and 3 prescribed the category of ST, SC and OBC and for female candidates made horizontal reservation and same has to be compartmentalized i.e. in each category. It is not disputed that horizontal reservation has been made under Article 15(3) of the Constitution of India, 50% vertical (social) reservation has been made under Article 15(4) of the Constitution of India and a separate class has been kept for women candidates as per sub-rule (3) of Rule 2. So, from the very beginning the intention of respondent Nos.1 to 3 was not to put women on par with ST, SC and OBC candidates based on vertical reservations, therefore, the classes which have been put in horizontal reservations cannot be converted to vertical reservation and they are not entitled for the same benefit which has been granted to the candidates of vertical reservation i.e. if candidates belonging to ST, SC and OBC are selected on their own merit in open category then they will be considered in the open category and quota of reservation category will be kept as it is for other candidates of reserved category i.e. vertical reservation.

14. Mr. V.G. Tamaskar, counsel for respondent Nos.4, 5 & 8 argued that respondents No.4, 5 & 8 are already admitted in the first year M.B.B.S. course and they have also deposited the admission fee, therefore, on the basis of Principle of Estoppel now their admissions cannot be cancelled and even if these respondents have been given admission in a faulty manner then also their admissions cannot be cancelled. He relied on the decisions of

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Km. Maxey Charan Vs. Rohilkhand University, Bareily and another reported in **AIR 1992 Allahabad 122**, **Sanatan Gauda Vs. Berhampur University and others** reported in **AIR 1990 Supreme Court 1075**, **Ashok Chand Singhvi Vs. University of Jodhpur and others** reported in **AIR 1989 Supreme Court 823** & also on **Ambika Prasad Mohanty and etc. V. Orissa Engineering College and another etc.** reported in **AIR 1989 Orissa 173**.

15. But looking to the facts of the present case, the above cited authorities are of no help to the respondents, as the Principle of Estoppel does not apply in the present case, for the reason that after counseling result was announced on 1.7.2005, on 2.7.2005 respondents were given admission by respondent Nos.2 & 3 and the petitioner has filed this writ petition on 3.7.2005 on coming to know about the applying reservation by the respondents No.2 & 3 in a faulty manner. The petitioner has challenged the admission of respondents No.4 to 8 on the ground that they have been given admission by applying a faulty manner of reservation, which is prejudicial to the petitioner and as per discussion in the foregoing paragraphs, it is clear that respondent Nos.4 to 8 have been given admission by applying reservation in a faulty manner, contrary to the constitutional provisions and prejudicial to the petitioner's interest and thereby, the petitioner has been ousted from the merit list otherwise he would have been given admission on the basis of his merit position.

16. The other arguments advanced by Shri Tamaskar that once the petitioner appeared in the examination accepting the rules, he cannot challenge the same on the ground of acquiescence. But, this argument is also without any merit because the petitioner's case is that respondents No.4 to 8 have been given admissions by interpreting the horizontal reservation wrongly and he has challenged the same, therefore, there is no question of acquiescence.

17. In the result, the petition of the petitioner is allowed, the admissions granted to respondent Nos.4 to 8 in contravention of horizontal reservation are quashed and respondent Nos. 2 & 3 are directed to prepare merit list of open category candidates afresh in accordance with observations made above i.e. in first instance, respondent Nos.2 & 3 should prepare the merit list of 39 candidates on the basis of numbers secured by each candidate irrespective of category or class and if 30% quota of women class is not satisfied in that case to include such number of women candidates to make-up the deficiency of women candidate up to 30% i.e. 13 seats and in order to accommodate those women candidates to delete the corresponding number of candidates from the bottom of list and give admissions accordingly.

18. It is informed that admissions to 1st Year M.B.B.S. course in the Chhattisgarh Institute of Medical Science (CIMS), Bilaspur are to be made out of the same merit list. Therefore, in order to ensure that on account of these admissions and this order the interest of respondent Nos.4 to 8 should not prejudice, in other terms to protect their interest, respondent No.2-Director, Medical Education, and Chhattisgarh Institute of Medical Science (CIMS), Bilaspur to consider the cases of respondent Nos.4 to 8 for their admissions in 1st Year M.B.B.S. course in CIMS according to their merit in the merit list.

19. Before parting with the order, I would like to observe that it is painful and disturbing that respondent authorities i.e. the Director, Medical Education, Raipur and the Dean, Medical College, Raipur inspite of the judgment of this Court on the same issue proceeded to give admissions contrary to the judgment, the propriety demands that if they had any doubt about the judgment then they ought to have filed an application seeking clarification or modification in the judgment. If such high officials of the Government would flout the judgment of this Court then how compliance of the Court's order can be expected from the others, therefore, respondent No.2 & 3 i.e. the Director, Medical Education, Raipur and the Dean, Medical College, Raipur are warn to be more careful in future.

Sd/-
L.C. Bhadoo
Judge

Roshan/-